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Before the
FEDERAL COMMUNICATIONS COMMISSION

DEC 26 1996

In the Matter of)

Federal Communications Commission
Office of Secretary

)
)
Policy and Rules Concerning the
Interstate, Interexchange Marketplace)

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

TELCO COMMUNICATIONS GROUP, INC.
COMMENTS IN SUPPORT OF
MCI TELECOMMUNICATIONS CORPORATION'S MOTION FOR STAY

Telco Communications Group, Inc. ("Telco"), through its undersigned counsel, hereby files these comments in support of the Motion of MCI Telecommunications Corporation ("MCI") for a Stay of the Commission's Second Report and Order^{1/} Pending Judicial Review. MCI filed a petition for review of the Order in the D.C. Circuit on December 2, 1996.

Telco, as an interexchange carrier which derives the bulk of its customers through casual calling, has actively participated in this proceeding in an effort to ensure that the FCC fully understands the very serious impact its Order will have on IXC's generally, and IXC's such as Telco in particular. As Telco has stated, carriers providing casual calling services face particularly serious problems with the Order because of the very nature of the relationship between Telco and its casual calling customers. While the Commission may assume, somewhat cavalierly, that IXC's, in general, can address the elimination of tariffs through the use of individual contracts, the essence of casual calling makes any such approach totally unworkable.

The benefit of a casual calling service is the ability of the customer to access the carrier's network on demand, without presubscription or other prior arrangements. Because the customer does not usually presubscribe to a casual calling service, the carrier lacks the opportunity to

^{1/} Adopted October 31, 1996, and released November 22, 1996, 61 Fed. Reg. 59,340 ("Order").

negotiate or execute any form of contract or agreement with the customer before the customer utilizes the service.

The Commission's Order, in removing the efficient mechanism of setting the rates, terms, and conditions between such carriers and their customers, threatens to undermine the growing business of casual calling. The uncertainty generated by the ambiguity of the casual caller and carrier relationship in the absence of a tariff may result in carriers withdrawing from that market. The Commission's Order, in such circumstances, is likely to have the perverse effect of limiting customers' choices and eliminating an important source of competition in the market.

As Telco explains in its recently filed motion for reconsideration of the Order, the options suggested by the Commission to address these issues are totally unrealistic.^{2/} The implied-in-fact contract doctrine may be useless to carriers providing casual calling services because the carriers have no documentation to illustrate to the court any definite terms from which the court could determine the customers' obligations.

In sharp contrast to this very real harm to a growing market segment and the callers who use it, there is no clear benefit to be derived by carriers or consumers from the elimination of the right to use a tariff. The Telecommunications Act of 1996 was enacted to encourage the emergence of competition in its various forms. Here, the Commission has sought to use that Act in ways which will demonstrably limit consumer choice.

The public interest supports a stay pending judicial review of the Commission's Order. No harm will befall the public as a result of the stay, and irreparable harm will impact carriers

^{2/} Telco Communications Group, Inc. Motion for Reconsideration at 3-4 (Dec. 23, 1996).

such as Telco unless the stay is granted. This perverse result strongly supports not only a grant of MCI's motion, but a reversal of the Commission's position on the merits.

Accordingly, Telco strongly supports the Motion of MCI to Stay the Order Pending Judicial Review.

Respectfully submitted,



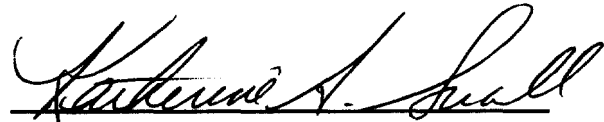
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Dated: December 26, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of December 1996, copies of the foregoing TELCO COMMUNICATIONS GROUP, INC. COMMENTS IN SUPPORT OF MCI TELECOMMUNICATIONS CORPORATION'S MOTION FOR STAY, CC Docket No. 96-61, were sent via Messenger** or via First-Class Mail, U.S. postage prepaid, to the parties on the attached service list.


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